



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
<http://www.epa.gov/region08>

July 11, 2003

Ref: 8ENF-T

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Steven H. Miller
Registered Agent for
Midcities Enterprises, LLC.
9104 N. Corral Ln.
Castle Rock, CO 80104

Corporation Service Company
Registered Agent for Coalton Acres, LLC.
1560 Broadway
Denver, CO 80202

Re: Administrative Order under the
Clean Water Act 33 U.S.C. § 309(a)

Dear Agents for Service of Process:

Enclosed is a United States Environmental Protection Agency Region 8 ("EPA") Administrative Order ("Order") issued to Midcities Enterprises, LLC and Coalton Acres, LLC. The Order specifies the nature of the violations under the Clean Water Act, as amended, 33 U.S.C. § 1251, et seq. (the "CWA"). The authority for such action is provided to EPA under section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3). The Order describes the actions necessary in order for Midcities Enterprises and Coalton Acres to achieve compliance with the CWA.

The CWA requires the Administrator of EPA to take all appropriate enforcement actions necessary to secure prompt compliance with the CWA and any Orders issued thereunder. Section 309 of the CWA provides a variety of possible enforcement actions, including the filing of a civil or criminal action (33 U.S.C. §§ 1319(b), (c), (d), and (g)). Section 508 allows for debarment from Federal contracts and/or loans for any noncompliance with the CWA or with an Order issued pursuant to the CWA (33 U.S.C. § 1368). Enclosed is also a memorandum from the Colorado Department of Public Health and Environment (CDPHE) regarding EPA enforcement proceedings in Colorado.



Please review the Order carefully. Failure to comply with the requirements of the Order shall constitute a violation of said Order. If you have any questions regarding this letter, the enclosed Order, or any other matters pertinent to compliance with the CWA, the most knowledgeable people on my staff regarding these matters are Colleen Gillespie, Technical Enforcement, at (303) 312-6047, and David J. Janik, Supervisory Enforcement Attorney, at (303) 312-6899.

Sincerely,

A. M. GAYDOSH for/

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures

cc: Tina Artemis, Regional Hearing Clerk
Mark Pifher, CDPHE

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Docket No. **CWA-08-2003-0082**

In the Matter of:

Midcities Enterprises, LLC,
a Colorado corporation,
and
Coalton Acres, LLC,
a Delaware corporation
Respondents.

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ADMINISTRATIVE ORDER

INTRODUCTION

1. This administrative order is authorized by Congress in section 309(a) of the Federal Water Pollution Control Act, commonly known as the Clean Water Act (CWA or the Act). 33 U.S.C. § 1319(a). The Environmental Protection Agency (EPA) regulations authorized by the statute are set out in part 122 of title 40 of the Code of Federal Regulations (C.F.R.), and violations of the statute, permits or EPA regulations constitute violations of that section of the Act.

2. The undersigned EPA official has been properly delegated the authority to issue this order. EPA has consulted with the State as required by the Act. 33 U.S.C. § 1319(g)(1).

3. EPA alleges that Respondents have violated the Act, permit and/or regulations and orders Respondent to achieve compliance, as more fully explained below.

FINDINGS OF FACT AND LAW

4. In order to restore and maintain the integrity of the nation's water, section 301(a) of the Act prohibits the discharge of pollutants into navigable waters of the United States, unless it is in compliance with a permit issued pursuant to the Act. 33 U.S.C. § 1311(a).

5. Section 402 of the Act establishes a National Pollutant Discharge Elimination System (NPDES) program, administered by EPA or State, to permit discharges into navigable waters, subject to specific terms and conditions. 33 U.S.C. § 1342.

6. The Act requires that a discharge of storm water associated with an industrial activity to navigable waters must comply with the requirements of an NPDES permit. 33 U.S.C. § 1342(p).

1 7. The Act authorized, and EPA issued, regulations that further define requirements for
2 NPDES permits for storm water discharges. 33 U.S.C. § 1318, § 1342(p). The regulations are
3 found at 40 C.F.R. part 122.
4

5 8. EPA regulations define discharges associated with industrial activity to include
6 construction activity. 40 C.F.R. § 122.26(b)(14)(x)
7

8 9. EPA regulations require each person who discharges storm water associated with
9 industrial activity to either apply for an individual permit or seek coverage under an existing and
10 lawful general permit. 40 C.F.R. § 122.26(c).
11

12 10. The State of Colorado has lawfully issued a general permit, under the authority of
13 State law and the Act, which authorizes the discharge of storm water associated with
14 construction activities, if done in compliance with the conditions of the permit. Colorado issued
15 certification no. COR-032714 on April 10, 2000 which provided storm water permit coverage
16 under permit no. COR-030000. Colorado permit no. COR-030000; attached as exhibit A
17 (“permit”).
18

19 11. The permit requires, among other things, that a person discharging pollutants develop
20 and implement an adequate storm water management plan (SWMP), conduct regular specified
21 storm water inspections, and implement best management practices (“BMPs”). BMPs include
22 structural controls (such as sediment ponds and silt fences) and management practices (such as a
23 dedicated concrete washout area and street sweeping).
24

25 12. Respondent Midcities Enterprises, LLC is a limited liability corporation,
26 incorporated in the State of Colorado, and doing business in the State of Colorado. Respondent
27 Coalton Acres, LLC is a limited liability corporation, incorporated in the State of Delaware, and
28 doing business in the State of Colorado
29

30 13. Respondents are “persons” within the meaning of section 502(5) of the Act, and
31 therefore subject to the requirements of the statute and/or regulations. 33 U.S.C. § 1362(5).
32

33 14. Respondent Midcities Enterprises, LLC is engaged in construction activities at a
34 facility located at 96th and Coalton Road in Broomfield, CO (“facility”). Respondent Coalton
35 Acres, LLC owns the facility.
36

37 15. Respondents engaged in construction activities at the facility at all times relevant to
38 this action.
39

40 16. Respondents are therefore engaged in an “industrial activity” as defined by EPA
41 regulations. 40 C.F.R. § 122.26(b)(14).
42

43 17. Storm water, snow melt, surface drainage and run off water leaves Respondents’

1 facility and goes into Autrey Reservoir.

2
3 18. The run off and drainage from Respondents' facility is "storm water" as defined by
4 EPA regulations. 40 C.F.R. § 122.26(b)(13).

5
6 19. Storm water contains "pollutants" as defined by the Act. 33 U.S.C. § 1362(6).

7
8 20. The Autrey Reservoir drains into Rock Creek, which eventually reaches the South
9 Platte River. Autrey Reservoir, Rock Creek, and the South Platte River are "navigable waters"
10 and "waters of the United States," as defined by the Act and EPA regulations, respectively. 33
11 U.S.C. § 1362(7); 40 C.F.R. § 122.2.

12
13 21. Respondents' storm water runoff is the "discharge of a pollutant" as defined by EPA
14 regulations. 40 C.F.R. § 122.(b)(14)(x).

15
16 22. An authorized EPA employee entered the facility with the consent of Midcities on
17 June 7, 2002 to inspect it for compliance with the statute, permit and regulations. The counts
18 below outline violations confirmed by the inspector.

19
20 23. Construction activities disturbing over five acres commenced at the facility in
21 January 1999. Respondents had control of the storm water management at the site beginning in
22 Spring 2001.

23
24 24. Section 301 of the Act and the storm water regulations at 40 C.F.R. § 122.26 require
25 that a stormwater permit be obtained for construction activity including clearing, grading and
26 excavation disturbing at least five acres. Respondents are covered under the permit and subject
27 to its terms and conditions.

28
29
30 **COUNT 1**

31
32 25. At the time of that inspection, Respondents' SWMP did not contain the following
33 required components: a complete site description, a complete site map, and a narrative
34 description of BMPs for each stage of construction.

35
36 26. Respondents' failure to develop a complete SWMP as required by the permit
37 constitutes violations of the Act. 33 U.S.C. § 1319, § 1342(p).

38
39
40 **COUNT 2**

41
42 27. The permit requires Respondents to implement best management practices (BMPs) in
43 order to minimize the impact of Respondents' construction activities on waters of the United

1 States. At the time of the June 7, 2002 inspection, the following BMPs were not in place or were
2 not being adequately implemented: vehicle track out pads, a BMP to protect a canal from
3 sediment, silt fences were not adequately installed and/or maintained, BMPs along the street
4 median, and inadequate BMPs at individual sites within the development were not present.
5

6 28. Respondents' failure to implement BMPs as required by the permit constitutes
7 violations of the Act. 33 U.S.C. § 1319, § 1342(p).
8
9

10 **ORDER**

11
12 Respondents are ordered to perform the following actions:
13

14 29. Within ten days of receipt of this administrative order ("Order"), submit written
15 notice of intent to comply with the requirements of this Order.
16

17 30. Within 10 days of receipt of this Order, submit a copy of the Notice of Intent and
18 renewed permit to demonstrate continual compliance with Colorado General Permit no. COR-
19 030000, effective July 1, 2002.
20

21 31. Within 30 days of receipt of this Order, develop a complete stormwater management
22 plan (SWMP) in accordance with the permit. The SWMP shall encompass all sites within the
23 common plan of development which are still owned and/or operated by Respondents. Submit a
24 complete copy of the SWMP within 35 days of receipt of this Order. Respondents must
25 implement all conditions of the SWMP in accordance with their permit.
26

27 32. Within 30 days of receipt of this Order, ensure that storm water inspections are being
28 conducted as outlined in the SWMP, and at least meet the minimum requirements of the permit.
29

30 33. Within 45 days of receipt of this Order, submit written documentation, including
31 photographs, that best management practices have been developed and implemented as required
32 by the permit and detailed in the SWMP including, but not limited to, erosion control and good
33 housekeeping practices. In addition, all required BMPs must be implemented in accordance with
34 the permit and SWMP for the life of the construction project.
35

36 34. Submit copies of the inspection reports quarterly, 10 days after the end of each
37 calendar quarter (October 10, 2003; January 10, 2004; April 10, 2004; July 10, 2004; etc.) for the
38 life of the construction project.
39

40 35. Upon final stabilization of the facility, submit an Inactivation Notice as required in
41 the permit, and submit a copy of the Inactivation Notice to the addressees in paragraph 37.
42
43

OTHER PROVISIONS

36. EPA regulations protect confidential business information. 40 C.F.R. part 2, subpart B. If Respondent asserts a business confidentiality claim pursuant to these regulations for information required to be submitted under this order, such information shall only be provided to EPA. If EPA determines the information you have designated meets the criteria in 40 C.F.R. § 2.208, the information will be disclosed only to the extent and by means of the procedures specified in the regulations. Unless a confidentiality claim is asserted at the time the information is submitted, the information shall be provided to both EPA and the Colorado Department of Public Health and Environment as specified below, and EPA may make the information available to the public without further notice to you.

37. All written notices and reports required by this Order shall be sent to the following addresses:

Colleen Gillespie (8ENF-T)
U.S. EPA Region 8
Office of Enforcement, Compliance
and Environmental Justice
Technical Enforcement Program
999 18th Street, Suite 300
Denver, Colorado 80202-2466

Scott Klarich (WQP-P)
Colorado Department of Health
and Environment
Water Quality Control Division
Water Quality Section
4300 Cherry Creek Drive South
Denver, CO 80246-1530

38. Any failure to comply with the requirements of this Order shall constitute a violation of the Order and may subject Respondent to penalties as provided under the Act, 33 U.S.C. § 1319.

39. This Order does not constitute a waiver or modification of the terms and conditions of Respondent's Colorado Discharge Permit System Permit which remains in full force and effect, or of any other legal responsibilities or liability.

40. This Order does not constitute a waiver of or election by EPA to forego any civil or criminal action to seek penalties, fines or other relief under the Act. The Act authorizes the assessment of civil penalties of up to \$27,500 per day for each violation of the Act, and fines and imprisonment for willful or negligent violations. 33 U.S.C. § 1319.

Date: 7/9/03 By: **SIGNED**
Carol Rushin
Assistant Regional Administrator

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE
ON JULY 11, 2003.**

